

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: JOHNSON & JOHNSON
TALCUM POWDER PRODUCTS
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION**

MDL NO. 3:16-md-2738-FLW-LHG

**JUDGE FREDA L. WOLFSON
MAG. JUDGE LOIS H. GOODMAN**

THIS DOCUMENT RELATES TO:

Civil Action No. 3:17-cv-11249-FLW-LHG

***ANNE HERMILLER v. JOHNSON
& JOHNSON, et al.***

**UNOPPOSED MOTION FOR SUBSTITUTION OF PLAINTIFF UNDER RULE 25(a)(1)
AND FOR LEAVE TO FILE AMENDMENT OF COMPLAINT TO ASSERT SURVIVAL
AND WRONGFUL DEATH CLAIMS**

Gerald Hermiller, as the Executor of the Estate of Linda Herrmann, moves the Court for an Order substituting him in as the plaintiff in this action and granting him leave to file the Amended Complaint asserting claims for wrongful death and survival. Gerald Hermiller should be duly substituted as plaintiff in this action under the provisions of Rule 25(a)(1) of the Federal Rules of Civil Procedure because:

1. Anne Hermiller, decedent, commenced this action on November 6, 2017, before her death. (Dkt. 1.)

2. Decedent Anne Hermiller died on December 1, 2018, due to injuries caused by the negligent acts and omissions as alleged in her original Complaint. (Dkt.1) Decedent is survived by her spouse, Gerald Hermiller and two children, Kyle Hermiller and Craig Hermiller. Notice of and Suggestion of her death was filed with this Court on September 10, 2020. (Dkt. 13).

3. Pursuant to Ohio law, the case must be filed by the administrator of the estate, Ohio Revision Code, Title XXI Section 2125.01. The claims made by Anne Hermiller against

Defendants herein survive her death. In addition to the causes of action which survive at common law, causes of action for mesne profits, or injuries to the person or property, or for deceit or fraud, also shall survive; and such actions may be brought notwithstanding the death of the person entitled or liable thereto, Ohio Revised Code, Title XXIII Section 2305.21.

4. A proposed First Amended Complaint alleging survival and wrongful death claims is attached hereto as **Exhibit A**.

5. Plaintiff's counsel has met and conferred with Defendants' counsel, who has indicated Defendants do not oppose the motion.

6. This motion is timely in that the deadline for the Wrongful Death Beneficiaries to file a motion for substitution of parties is not expired.

DATED: September 15, 2020

Respectfully Submitted,

By: Trent B. Miracle

SIMMONS HANLY CONROY

ONE COURT STREET

ALTON, IL 62002

618-259-2222

Fax: 618-259-2251

Email: tmiracle@simmonsfirm.com

Counsel For Plaintiff